

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN DOES, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-0178JLR

**JEWISH FAMILY SERVICE  
PLAINTIFFS' SUPPLEMENTAL  
BRIEFING ON THE INAPPLICABILITY  
OF SUPREME COURT STAY ORDERS  
TO THE PENDING PRELIMINARY  
INJUNCTION MOTIONS**

(RELATING TO CASE NO. C17-1707JLR)

JEWISH FAMILY SERVICE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-1707JLR

1 The Supreme Court’s December 4 orders (the “Stay Orders”) staying preliminary  
 2 injunctions of portions of Proclamation No. 9,645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (“EO-  
 3 3”) in *Int’l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 4674314 (D. Md.  
 4 Oct. 17, 2017) (“*IRAP*”) and in *Hawai’i v. Trump*, No. 17-00050 DKW-KSL, 2017 WL 4639560  
 5 (D. Haw. Oct. 17, 2017) (“*Hawai’i*”), have no impact on the preliminary injunction motions in  
 6 these cases. The Supreme Court did not opine on the merits or the equities in issuing the Stay  
 7 Orders, making it impossible to discern the bases on which they were granted. *See Trump v. Int’l*  
 8 *Refugee Assistance Project*, No. 17A560, 2017 WL 5987435 (U.S. Dec. 4, 2017); *Trump v.*  
 9 *Hawai’i*, No. 17A550, 2017 WL 5987406 (U.S. Dec. 4, 2017). Such stays do not require the  
 10 stay applicants to show that they are “more likely than not” to ultimately prevail on the merits.  
 11 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011).

12 In any event, the Stay Orders have no effect here because this case and *IRAP/Hawai’i*  
 13 challenge different immigration policies, raise different legal and factual claims, and seek  
 14 different relief on behalf of different sets of parties. *IRAP/Hawai’i* challenge EO-3, the ban on  
 15 certain immigrant and non-immigrant entry from six Muslim-majority countries plus North  
 16 Korea and Venezuela, which the President proclaimed to be necessary after the conclusion of a  
 17 90-day “worldwide review” of immigration screening and vetting measures. 82 Fed. Reg.  
 18 45,161. This case, by contrast, challenges the Refugee Ban set forth in an agency memorandum  
 19 (“Memorandum”), which continues to suspend portions of the U.S. Refugee Admissions  
 20 Program (“USRAP”), purportedly so that the agencies can continue a review of the program that  
 21 was directed by, but apparently not completed under, prior Executive Orders. *See Exec. Order*  
 22 *No. 13,769 (“EO-1”), 82 Fed. Reg. 8,977, 8,979 (Feb. 1, 2017) (suspending the USRAP for 120*  
 23 *days during review); Exec. Order No. 13,780 (“EO-2”), 82 Fed. Reg. 13,209, 13,215 (Mar. 9,*  
 24 *2017) (same).* Plaintiffs’ challenge differs from those raised in *IRAP/Hawai’i* with respect to  
 25 every factor of the preliminary injunction inquiry: likelihood of success on the merits, irreparable  
 26 harm, balance of equities, and public interest. *See PI Mot. (ECF 42) at 9.*

1        First, on the merits, Plaintiffs’ statutory challenge to the Memorandum differs from  
 2        *IRAP/Hawai’i*, which challenge the President’s claimed authority to issue EO-3 under 8 U.S.C.  
 3        § 1182(f) and § 1185(a)(1). *See IRAP*, 2017 WL 4674314, at \*19; *Hawai’i*, 2017 WL 4639560,  
 4        at \*9. In contrast, here, the President has not invoked either statute. The statutory question in  
 5        this case is whether *the agencies*, not the President, have the authority to suspend the USRAP for  
 6        follow-to-join petitioners and for nationals of eleven countries on the Security Advisory Opinion  
 7        (“SAO”) list without rulemaking procedures and without an adequate justification. As the *JFS*  
 8        Plaintiffs explained for the SAO ban and *Doe* Plaintiffs explained for the FTJ ban, the answer is  
 9        no. *See* PI Mot. at 17-23; *Doe v. Trump*, PI Mot. (ECF 45) at 9-14.

10        Moreover, although Plaintiffs’ constitutional challenges to the Memorandum are legally  
 11        similar to those in *IRAP/Hawai’i*, the evidence is different. In addition to the evidence of this  
 12        Administration’s anti-Muslim animus presented in *IRAP/Hawai’i*, Plaintiffs here have submitted  
 13        evidence establishing that the purpose and the effect of the Refugee Ban in particular is to  
 14        disfavor Muslim refugees and favor Christian refugees. *See* PI Mot. at 13-17. The Refugee Ban  
 15        suspends admissions from countries that account for 80 percent of the Muslim refugees entering  
 16        the United States and prioritizes applications from countries whose refugees have been 70  
 17        percent Christian—changing the religious composition of the USRAP in precisely the ways that  
 18        this Administration promised, both before and after taking office. *See id.* at 7-8, 13-17. This  
 19        type of religious preference violates every test under the Establishment Clause. *See id.*

20        Second, with respect to irreparable harm, beyond the injuries that Plaintiffs share with the  
 21        *IRAP/Hawai’i* plaintiffs, refugees—who, by definition, face serious harm amounting to  
 22        persecution—suffer additional irreparable injury from being stranded in perilous circumstances.  
 23        *See Leiva-Perez*, 640 F.3d at 969-70 (recognizing likelihood of physical danger to be irreparable  
 24        harm). *Doe* 1, for example, is an Iraqi former translator for the U.S. military who was on the  
 25        verge of resettling in the United States in early October 2017, but his life remains at risk every  
 26        day because of the Refugee Ban. *Doe* 1 Decl. (ECF 52) ¶¶ 3-16. *Doe* 4 faces such dire threats to

her safety on a daily basis as a transgender woman in Egypt that the U.S. Embassy expedited processing of her application prior to the Refugee Ban. Doe 4 Decl. (ECF 55) ¶¶ 3-7. Other refugee Plaintiffs, their family members, and clients of the organizational Plaintiffs and their family members are similarly at risk of physical harm because of the Refugee Ban. *See, e.g.*, Doe 2 Decl. (ECF 53) ¶¶ 6, 10; Doe 5 Decl. (ECF 56) ¶¶ 4-6, 9; JFS-S Decl. (ECF 50) ¶¶ 21, 35; JFS-SV Decl. (ECF 51) ¶¶ 24, 35, 42.

Finally, the balance of equities and the public interest also differentiate this case from *IRAP/Hawai'i*. There, the government has argued that the stay was necessary to respond to national security threats and to conduct foreign relations in accordance with the worldwide review undertaken pursuant to the prior Executive Orders. App. to Stay, at 34-37, *available at* <https://tinyurl.com/yaa7xxrh>. Here, after reviewing the USRAP under EO-1 and EO-2 since January 2017, the Administration *still* has no justification for its SAO suspension beyond generalized concerns and a desire to continue review of the USRAP. *See* Mem. at 2. Refugees—particularly from the SAO countries—are already the most rigorously vetted group of people entering the United States. *See* Nat'l Sec. Decl. (ECF 46) ¶¶ 8-11. The balance of equities, as well as the public interest in the United States' statutorily codified commitment to refugee admissions, *see* Refugee Act of 1980, Pub. L. No. 96-212 § 101(b), 94 Stat. 102, weigh strongly in favor of Plaintiffs' request for preliminary relief—just as they did for EO-1 and EO-2, which also suspended the USRAP pending review. *See Washington v. Trump*, 847 F.3d 1151, 1168-69 (9th Cir. 2017); *Hawai'i v. Trump*, 859 F.3d 741, 783-85 (9th Cir. 2017), *vacated by* 874 F.3d 1112 (9th Cir. 2017).<sup>1</sup>

For all the reasons stated, the Supreme Court stay orders do not affect this Court's consideration of the pending preliminary injunction motions.

<sup>1</sup> Notably, the Supreme Court did not stay the injunctions as to EO-2's suspension of the USRAP, except for people lacking bona fide relationships to U.S. entities or persons, *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2089 (U.S. June 26, 2017)—a limitation that should not apply in this case given the record of harm to Plaintiffs, as explained in Plaintiffs' motion, *see* PI Mot. at 23-24.

Respectfully submitted,

DATED: December 7, 2017

/s/ Lauren Watts Staniar

David Burman, WSBA No. 10611  
 Lauren Watts Staniar, WSBA No. 48741  
 Tyler Roberts, WSBA No. 52688  
 Perkins Coie LLP  
 1201 Third Avenue, Suite 4900  
 Seattle, WA 98101-3099  
 Telephone: 206.359.8000  
 Facsimile: 206.359.9000  
 dburman@perkinscoie.com  
 lstaniar@perkinscoie.com  
 troberts@perkinscoie.com

Justin B. Cox, *Pro Hac Vice*  
 National Immigration Law Center  
 PO Box 170208  
 Atlanta, GA 30317  
 Tel: (678) 279-5441  
 Fax: (213) 639-3911  
 cox@nilc.org

Mariko Hirose, *Pro Hac Vice*  
 Deepa Alagesan, *Pro Hac Vice*  
 Linda Evarts, *Pro Hac Vice*  
 Kathryn C. Meyer, *Pro Hac Vice*  
 International Refugee Assistance Project  
 40 Rector Street, 9th Floor  
 New York, NY 10006  
 Tel: (646) 459-3044  
 mhirose@refugeerights.org  
 dalagesan@refugeerights.org  
 levarts@refugeerights.org  
 kmeyer@refugeerights.org

Karen C. Tumlin, *Pro Hac Vice*  
 Melissa S. Keaney, *Pro Hac Vice*  
 Esther H. Sung, *Pro Hac Vice*  
 National Immigration Law Center  
 3450 Wilshire Blvd, #108-62  
 Los Angeles, CA 90010  
 Tel: (213) 639-3900  
 Fax: (213) 639-3911  
 tumlin@nilc.org  
 keaney@nilc.org  
 sung@nilc.org

Elizabeth Sweet, *Pro Hac Vice*  
 Mark Hetfield, *Pro Hac Vice*  
 HIAS, Inc.  
 1300 Spring Street, Suite 500  
 Silver Spring, MD 20910  
 Tel: 301-844-7300  
 liz.sweet@hias.org  
 mark.hetfield@hias.org

Lauren E. Aguiar, *Pro Hac Vice*  
 Mollie M. Kornreich, *Pro Hac Vice*  
 Abigail E. Davis, *Pro Hac Vice*  
 Four Times Square  
 New York, NY 10036  
 Tel: (212) 735-3000  
 Fax: (212) 735-2000  
 lauren.aguiar@probonolaw.com  
 mollie.kornreich@probonolaw.com  
 abigail.sheehan@probonolaw.com

*Counsel for Plaintiffs Jewish Family Service, et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all of the registered CM/ECF users for this case.

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of December, 2017.

/s/ Lauren Watts Staniar

Lauren Watts Staniar, WSBA No. 48741